

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

GARY MACULA, <i>et al.</i> ,)	CASE NO.: 1:07 CV 1545
)	
Plaintiffs,)	JUDGE DONALD C. NUGENT
)	
v.)	
)	
LAWYERS TITLE INSURANCE CORP.,)	<u>JUDGMENT</u>
)	
Defendant.)	
)	

Pursuant to a Memorandum Opinion and Order of this Court, the Motion to Dismiss the Class Action Complaint filed by Defendant Lawyers Title Insurance Corp. is DENIED in part and GRANTED in part. (ECF # 9.) More specifically, as to Count II (breach of contract), Count III (fraud), Count VI (unjust enrichment), and Count VIII (money had and received), the Motion to Dismiss is DENIED. Conversely, the Motion is GRANTED with respect to Count I of the Complaint for declaratory and injunctive relief. The Court will consider the request for equitable relief set forth in Count I if and when Plaintiffs establish their right to relief under a substantive claim. With respect to Count VII, for breach of duty of good faith and fair dealing, Plaintiffs' claim shall be subsumed into the claim for breach of contract contained in Count II of the Complaint. The Motion to Dismiss Count VII is thus GRANTED. Further, because Plaintiffs fail to properly assert a claim for a breach of fiduciary duty in Count IV of the Complaint and for conversion in Count V of the Complaint, the Motion to Dismiss is GRANTED with respect to these claims.

IT IS SO ORDERED.

s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: August 14, 2008